ATTORNEY FOR APPELLANTS:

KENNETH D. REED
Hammond, Indiana

ATTORNEYS FOR APPELLEES:

RANDY H. WYLLIE
Schererville, Indiana

JOHN E. HUGHES
MICHAEL E. TOLBERT
Merrillville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JEFFREY A. LANGBEHN and GERRY SCHEUB,	)	
Appellants-Defendants,	)	
vs.	)	No. 45A04-0605-CV-243
MICHAEL J. BOGESE, JR., HICKORY HILLS DEVELOPMENT COMPANY, L.L.C., INTERSTATE INVESTMENT COMPANY, L.P., DAVID L. CARTER, FREEMAN, FREEMAN AND SALZMAN, P.C., and CHRIS C. GAIR,	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable William Davis, Special Judge
Cause No. 45D02-0410-CT-00141

FEBRUARY 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Plaintiffs-Appellants Jeffrey A. Langbehn ("Langbehn") and Gerry Scheub ("Scheub") appeal from the trial court's grant of summary judgment and denial of a motion to correct error in a lawsuit involving Defendants-Appellees Michael J. Bogese, Jr. ("Bogese"), Hickory Hills Development Company, L.L.C. ("Hickory Hills"), Interstate Investment Company, L.P. ("Interstate"), David L. Carter ("Carter"), the law firm of Freeman, Freeman and Salzman, P.C. ("the Freeman Firm"), and Chris C. Gair ("Gair").[1] We affirm.

Langbehn and Scheub raise five issues for our review, which we renumber and restate as:

I. Whether the trial court erred in granting summary judgment on the basis that there was no material issue of fact pertaining to whether the Defendants-Appellees had probable cause to bring a prior action against Langbehn and Scheub.

II. Whether the trial court erred in determining that the judgment in the prior case was not res judicata.

III. Whether the trial court erred in striking certain affidavits tendered by Langbehn and Scheub.

IV. Whether the trial court erred in crediting certain affidavits tendered by the Defendants-Appellees.

[1] Bogese, Carter, and Interstate are principals in Hickory Hills. Gair, a former member of the Freeman firm, represented Hickory Hills in an antecedent action. At times, it will be necessary to refer to these parties collectively as "Defendants-Appellees."

V. Whether the trial court's summary judgment order failed to comply with Indiana Trial Rule 56(C).

In 1990, the Indiana General Assembly enacted legislation (Ind. Code 13-21) that required comprehensive solid waste management planning throughout the State. Among other things, the legislation required each county to form a solid waste management district or join with other counties in the formation of a multiple-county solid waste management district. In 1991, the Lake County Board of Commissioners ("Board of Commissioners") adopted an ordinance to establish the Lake County Solid Waste Management District ("the District"). The Board of Commissioners' ordinance resolution required the District to develop and implement a solid waste management plan that satisfied the requirements of Ind. Code § 13-9.5-4 (subsequently recodified as Ind. Code § 13-21-5).

The District adopted its Lake County Solid Waste Management Plan ("Plan"), which acknowledged that the then existing Lake County landfills soon would be closed or filled to capacity, resulting in a shortfall of landfill disposal capacity. The Plan stated that "the District cannot afford to ignore developments which may result in a shortage of landfilling capacity within seven to ten years. It is the one indispensable element regardless of the structure of the other solid waste management alternatives which the District chooses to pursue." (Appellants' App. at 418).

In 1994, the District formally issued a "Request for Proposals" ("RFP") inviting proposals from vendors to construct a solid waste landfill in Lake County and operate the

landfill for at least twenty years. Hickory Hills responded to the RFP, as did six other companies, and submitted a proposal for the development of the Hickory Hills Landfill.

Using criteria established by the District, an independent engineering consultant evaluated the proposals and in June 1994 ranked Hickory Hills' Eagle Creek property as the best site for the landfill. Following the release of the report, Langbehn, the District's Executive Director, told the press that he would "not be a bit surprised if you see a shuffling of that order." (Appellants' App. at 718). In 1995, the District hired a second independent engineering consultant to again review the proposals and rank them according to the District's criteria. Sometime during the year, Langbehn and District Board Chairman James Metros met with Hickory Hills' representatives, and Metros suggested that Hickory Hills should facilitate the proposal evaluation process by "buying out" one of its competitors. Hickory Hills refused to do so.

The second independent engineering consultant issued a report stating that Hickory Hills was not only the best proposal but was the only one offered by an entity that could be permitted by the Indiana Department of Environmental Management ("IDEM"). Despite the conclusion reached by the second independent consultant, Langbehn publicly claimed that the new report "further confused the issue, rather than solidifying it." (Appellants' App. at 718). Metros and Langbehn began lobbying against Hickory Hills, and a third member of the District Board alerted Hickory Hills that "the fix was on" and that another company would be accepted by the Board.

However, the District Board subsequently selected the Hickory Hills site for development of a new solid waste landfill and authorized the negotiation of a contract

with Hickory Hills to develop and operate the landfill. The parties timely completed negotiation of a contract, termed the "Host Community Agreement" ("HCA"), whereby the District agreed that the Eagle Creek property would be developed and used as a regional waste landfill. Metros and Langbehn, along with another party, served as the District's principal negotiators of the HCA.

The day before the District Board was set to vote on the HCA, Langbehn lobbied the District Board members to vote against the Hickory Hills contract. In addition, Langbehn publicly and intentionally circulated information that he knew was false in order to incite opposition to the contract. Specifically, Langbehn suggested that the Hickory Hills site would end up receiving 20,000 tons of trash per day, which (if true) would make it the largest trash recipient in the world.

On May 23, 1996, the District Board approved the HCA with Hickory Hills. The HCA conferred benefits upon the District and it members, including providing necessary landfill capacity to meet the District's Solid Waste Plan and paying royalties to the District, the township, and the school district. The HCA expressly recognized the need for a new regional landfill in Lake County, and it required USA Waste to provide the District with "with disposal capacity in the Landfill for household municipal sold waste generated within the County for a minimum period of thirty (30) years. . . ." (Appellants' App. at 496). As an inducement to Hickory Hills, the HCA also provided that the District would not construct a competing landfill, transfer station, incinerator or resource recovery system or support the need for another landfill in Lake County or any other county. (Appellants' App. at 497).

Pursuant to the HCA, Hickory Hills and USA Waste were required to, and did, obtain approval of the rezoning of the Hickory Hills Landfill site as a "Conditional Development District" to allow the construction and operation of the landfill. The District promised to use its "diligent and good faith efforts" to assist Hickory Hills in obtaining all necessary permits and governmental approvals for the landfill. (Appellants' App. at 489). The District also agreed to take all action necessary to support USA Waste's statutorily required demonstration to IDEM of the need for the landfill. The District further agreed not to "take any action to prevent, delay or impair the development, permitting (including any renewals or modifications), construction, operation, corrective action, maintenance or closure" of the Hickory Hills Landfill. *Id.*

In reliance upon the District's representations, promises, and commitments, Hickory Hills and USA Waste spent substantial sums of money to obtain the necessary zoning and to prepare and process the applications to permit and approve a new solid waste land disposal facility in fulfillment of its obligations under the HCA. On March 27, 1997, the District provided a letter to IDEM stating that it supported the need for the Hickory Hills Landfill, and on April 2, 1997, USA Waste submitted a permit application to IDEM.

Thereafter, instead of supporting the Hickory Hills Landfill as required by the HCA, the District withdrew its support in a letter sent to IDEM. Furthermore, the District

also voted to negate the HCA. Metros, Langbehn, and Scheub had significant roles in these actions.[2]

Hickory Hills initiated an action in the Lake Superior Court for a preliminary injunction to enforce the HCA. The trial court issued the injunction and reinstated the HCA, finding that the District's action in negating the contract was "null and void."

Subsequently, IDEM denied Hickory Hills' permit application, concluding that the District had shown through its letter that there was no longer any need for a landfill. Hickory Hills, Bogese, Carter, and Interstate responded by filing a complaint, alleging that the District had breached the HCA and had tortiously interfered with the purchase agreement. The complaint further alleged that Metros, Langbehn, and Scheub tortiously interfered with the HCA, conspired with the District and among themselves to tortiously interfere with the HCA, and tortiously interfered with the purchase agreement. Hickory Hills was represented by Gair and Joseph Van Bokkelen. At the time, Gair was affiliated with the Freeman firm.

Hickory Hills and the District ultimately settled, with the District agreeing to pay $9,000,000 in damages. However, the trial court granted summary judgment in favor of Metros, Langbehn, and Scheub as individual defendants.

Metros filed an action in federal court against Bogese, Hickory Hills, Interstate, the Freeman Firm, and Gair for libel, negligence, abuse of process, and malicious prosecution. Because Metros waited more than two years to bring the first three of the

[2] Scheub was a Lake County Commissioner and member of the District Board.

aforementioned claims, and thus failed to file the claims within the statute of limitations, the court granted summary judgment in the defendants' favor. *See Metros v. Bogese et al.*, 2005 WL 3409725 (N.D. Ind.) (not reported in F.Supp.2d). The court also granted summary judgment for the defendants on the merits of the malicious prosecution claim. *Id.* In doing so, the court stated:

> In the present case, it is undisputed that Hickory Hills, Interstate, and Bogese initiated the state-court suit against Metros only after consulting attorneys to determine whether that action was warranted. Those attorneys, defendant Gair and attorney Joseph Van Bokkelen (who was not named as a defendant in the present suit), have filed their own affidavits detailing the efforts they made to determine that probable cause existed for filing the lawsuit. Further, Gair and Freeman have filed the affidavit of David C. Jensen, an experienced and distinguished local attorney, who has thoroughly reviewed the record of the state court lawsuit and discovery adduced therein, and states as his expert opinion that the suit against Metros was "amply supported" by the evidence and that probable cause therefore existed.
>
> In his response Metros has not even addressed the Jensen affidavit, arguing that Van Bokkelen's conclusion is based on "speculation," while the state court's grant of summary judgment to Metros on the basis of immunity establishes that there was no legal basis for bringing the suit where the complaint did not plead that Metros acted outside the scope of his duties. Thus, he argues that defendants are not entitled to summary judgment.
>
> As defendants point out in their replies, Metros is incorrect. The state-court complaint . . . did allege that Metros acted beyond the scope of his duties. In essence, Metros is arguing simply because he obtained summary judgment in the underlying lawsuit, defendants lacked probable cause to bring it, which conflates the third and fourth elements of a malicious prosecution claim. Because Metros has provided no evidence, in the form of expert opinion or otherwise, to place in dispute either the facts showing that defendants did

> exercise due diligence before bringing the suit or Jensen's expert opinion that probable cause existed, there is no actual dispute requiring trial and defendants are entitled to summary judgment.

Id. at 3.

Langbehn and Scheub filed an action in state court asserting, among other things, that the Defendants-Appellees engaged in malicious prosecution by bringing the original lawsuit against Langbehn and Scheub in their individual capacities. The trial court granted the Defendants-Appellees' motion for summary judgment and struck certain affidavits tendered by Langbehn and Schueb. It subsequently denied Langbehn and Schueb's motion to correct error. This appeal ensued.

I.

Langbehn and Scheub contend that the trial court erred in granting Defendants-Appellees'motion for summary judgment as it pertains to the viability of their malicious prosecution claim. They argue that questions of material fact prohibit the grant of summary judgment and that the trial court's decision usurped the jury's function as the trier of fact.

The purpose of summary judgment is to terminate litigation about which there is no factual dispute and which may be determined as a matter of law. *Ratcliff v. Barnes*, 750 N.E.2d 433, 436 (Ind. Ct. App. 2001), *trans. denied*. When reviewing the grant or denial of summary judgment, this court applies the same standard as the trial court. *Id*. Summary judgment is appropriate only if the designated evidentiary material shows there

is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*.

In performing our analysis, we consider the pleadings and evidence sanctioned by Ind. Trial Rule 56(C) without determining weight or credibility. *Mehling v. Dubois County Farm Bureau Co-op. Ass'n*, 601 N.E.2d 5, 6 (Ind. Ct. App. 1992). All doubts about the existence of facts or the reasonable inferences to be drawn therefrom are to be resolved in the nonmovant's favor, and this Court will carefully scrutinize the trial court's determination to assure that the nonmovant was not improperly denied his day in court. *Heck v. Stoffer*, 786 N.E.2d 265, 268 (Ind. 2003).

The essence of malicious prosecution rests on the notion that the plaintiffs have been improperly subjected to legal process. *Crosson v. Berry*, 829 N.E.2d 184, 189 (Ind. Ct. App. 2005), *trans. denied*. In order to establish malicious prosecution, the plaintiffs must prove the following: (1) the defendants instituted or caused to be instituted an action against the plaintiffs; (2) the defendants acted maliciously in so doing; (3) the defendants had no probable cause to institute the action; and (4) the original action was terminated in the plaintiffs' favor. *Id*. The key issues, as identified by Langbehn and Scheub in the present case, are whether the Defendants-Appellees brought suit against Langbehn and Scheub as individuals without probable cause and whether the Defendants-Appellees acted maliciously in bringing such suit.

Probable cause exists "when a reasonably intelligent and prudent person would be induced to act as did the person who is charged with the burden of having probable cause." *Maynard v. 84 Lumber Co.*, 657 N.E.2d 406, 408-9 (Ind. Ct. App. 1995), *trans.*

denied. In evaluating an attorney's decision to bring suit, we note that the attorney's role is "to facilitate access to the judicial system for any person seeking legal relief." *Wong v. Tabor*, 422 N.E.2d 1279, 1285 (Ind. Ct. App. 1981). As such, the probable cause determination "must encompass consideration of the law's desire to fully meet the client's needs." *Id*.

An attorney is under an ethical duty to avoid suit where the only purpose is to harass or injure, but if "a balance must be struck between the desire of an adversary to be free from unwarranted accusations and the need of the client for undivided loyalty, the client's interests must be paramount." *Id*. at 1286. Therefore, "any standard of probable cause must preserve "the attorney's duty to his client to present his case vigorously in a manner as favorable to the client as the rules of law and professional ethics will permit." *Id*. Mere negligence is not sufficient to subject an attorney to liability for bringing suit. *Id*. "To create liability only for negligence, for the bringing of a weak case, would be to destroy [an attorney's] efficacy as advocate of his client and his value to the court, since only the rare attorney would have the courage to take other than an 'easy' case." *Id.* (quoting *Berlin v. Nathan*, 64 Ill.App.3d 940, 381 N.E.2d 1367, 1376 (1978), *cert. denied* 444 U.S. 828, 100 S.Ct. 53, 62 L.Ed.2d 36 (1979)). The "chilling effect that a broad rule of attorney liability would have upon the legal system, and ultimately upon its popular acceptance as a means of dispute resolution, appears to outweigh the value of the protection it would afford to those who might be deemed 'innocent' defendants." *Id*.

An attorney has probable cause to represent a client in litigation when, after a reasonable investigation and industrious search of legal authority, he has an honest belief

that his client's claim "is tenable in the forum in which it is to be tried." *Id.* at 1287 (quoting *Tool Research Corp. v. Henigson*, 46 Cal.App.3d 675, 120 Cal.Rptr. 291, 297 (1975)). The attorney must entertain a subjective belief that the claim merits litigation and that belief must satisfy an objective standard. *Id.*at 1288. The objective standard is "whether the claim merits litigation against the defendant in question on the basis of the facts known to the attorney when suit is commenced." *Id*. As noted above, the question is answered in the negative if no competent and reasonable attorney familiar with the law of the forum would consider the claim worthy of litigation on the basis of the facts known by the attorney who instituted suit. *Id.* Where there is some factual basis for bringing the claim, lack of probable cause cannot be based upon a negligent failure to investigate thoroughly." *Id.* at 1289. Where the facts are uncontroverted, it is the trial court's prerogative to determine the existence or nonexistence of probable cause. *Id.* at 1285.

In the present case, Langbehn and Scheub do not challenge the facts as asserted by Van Bokkelen and Jensen in their respective affidavits. Instead, Langbehn and Scheub question the thoroughness of Gair and Van Bokkelen's original investigation and Jensen's assessment of that investigation. Specifically, they claim that Gair and Van Bokkelen failed to question District Board members and IDEM employees to ascertain the level of Langbehn's and Scheub's influence.

Our examination of the designated evidence discloses that the affidavits filed by the Defendants-Appellees outline the steps that Gair and Van Bokkelen took in determining whether to file suit against Langbehn and Scheub as individuals. The affidavits show that Gair and Van Bokkelen reviewed public resources, including public

meeting minutes and transcripts, court transcripts from the preliminary injunction hearing, and newspaper articles to arrive at their conclusion that Langbehn and Scheub could be held personally liable because they acted outside their employment with the District and thus were not granted immunity under Ind. Code § 34-13-3-5.[3]

After reviewing a number of documents, Jensen concluded that Gair and Van Bokkelen acted appropriately. Among other things, Jensen cited Langbehn's and Scheub's actions to encourage the District Board to breach the HCA while knowing that such a breach would leave the District Board vulnerable to a lawsuit for such breach. In addition to these affidavits, Jensen reviewed Langbehn's deposition indicating that he believed he was free to encourage a breach of the HCA as long as he was not giving such encouragement in his capacity as Executive Director of the District, and Scheub's deposition indicating that he believed he was free to pursue private political aims.

With regard to Langbehn and Scheub's claim that Gair's and Van Bokkelen's investigations were insufficient, we note that both determined from their review of public documents that Langbehn's and Scheub's actions had considerable influence upon public sentiment and upon the District Board's actions. We further note that Gair and Van Bokkelen determined from their investigation that IDEM's denial of a permit was based upon the District Board's communications as influenced by Langbehn's and Scheub's actions.

[3] Ind. Code § 34-13-3-5 provides immunity to government employees who are acting within the scope of their employment. That immunity doesn't extend to actions that are outside the scope of employment.

We conclude that the trial court did not err in finding, as a matter of law, that the Defendants-Appellees' motion for summary judgment should be granted. There was probable cause for Gair and Van Bokkelen to conclude that Langbehn and Scheub acted outside the immunity afforded by Ind. Code § 34-13-3-5.[4] Because we hold for the Defendants-Appellees and thus find that Langbehn and Scheub failed to established an element of probable cause, we need not address whether the Defendants-Appellees acted maliciously. *See Maynard*, 657 N.E.2d at 409.

II.

As stated above, the trial court in the antecedent action granted summary judgment in Langbehn's and Scheub's favor on the issue of their alleged individual liability for tortious acts. Langbehn and Scheub argue in the present case that the trial court's determination constitutes res judicata on the issue of whether the Defendants-Appellees had probable cause to pursue the antecedent action against them in their individual capacities. In their appellants' brief, Langbehn and Scheub state that it is "legally incorrect, if not logically impossible" to hold in the present case that Defendants-Appellees "have now, in 2006, shown the existence of 'probable cause' to have filed the suit on August 4, 2000, when there is an earlier final judgment holding that those parties didn't even have enough evidence as of July 29, 2002 (2 years later), to create even a

[4] We note, with reference to Bogese, Hickory Hills, Interstate, and Carter, that advice of legal counsel is an absolute defense to a malicious prosecution action. *See Barrow v. Weddle Brothers Construction*, 316 N.E.2d 845 (Ind. Ct. App. 1974).

simple issue of fact, much less real evidence of wrongdoing by Langbehn and Scheub." (Appellant's Brief at 16).

The issue before the trial court in the antecedent action was whether the then plaintiffs had designated sufficient evidence to establish a question of material fact as it pertained to their claims of tortious interference with the HCA, conspiracy to tortiously interfere with the HCA, and tortious interference with the purchase agreement. The trial court determined that there was no factual issue on the question of whether Langbehn's and Scheub's actions were privileged. The trial court did not determine whether the then Plaintiffs had probable cause to assert the claims. We decline Langbehn and Scheub's invitation to hold that a plaintiff who loses on summary judgment is automatically liable for malicious prosecution.

III.

In its summary judgment order, the trial court struck the affidavit of attorney Clifford E. Duggan, Jr. because Langbehn and Scheub neglected to disclose Duggan as an expert within the time period mandated by the trial court's previous case management order. In striking Duggan's affidavit, the trial court noted that Duggan "was an attorney for Plaintiffs in the original action which precludes him from testifying fully because of attorney-client privilege." (Appellants' App. at 1232). Langbehn and Scheub contend that the trial court (1) violated a local trial rule by requiring Langbehn and Scheub, four days after the filing of a motion to strike the affidavits, to defend against the motion; and (2) erred in striking affidavits that contain facts based upon the affiants' personal knowledge.

We review a trial court's decision to admit or exclude evidence generally, and its decision on a motion to strike specifically, for an abuse of discretion. *Wilkinson v. Swafford*, 811 N.E.2d 374, 388, (Ind. Ct. App. 2004), *abrogated in part on other grounds, Willis v. Westerfield,* 839 N.E.2d 1179 (Ind. 2006). We will reverse such an exercise of discretion only when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

We first observe that Langbehn and Scheub failed to ask for a continuance when ordered to respond to the motion to strike during the summary judgment hearing. Failure to request a continuance results in waiver of an issue on appeal when the issue is based upon a party's surprise or lack of notice. *See e.g., Kirtley v. McClelland,* 562 N.E.2d 27, 32 (Ind. Ct. App. 1990), *trans. denied*; *Hirsch v. Merchants National Bank & Trust Co. of Indiana,* 166 Ind.App. 497, 336 N.E.2d 833 (1975).

We also observe that Duggan's affidavit was not submitted within the time dictated by the trial court's case management order. A trial court does not abuse its discretion when it enforces its order by sanctioning a party that fails to timely disclose expert witnesses. *See Nyby v. Waste Management, Inc.*, 725 N.E.2d 905, 915 (Ind. Ct. App. 2000), *trans. denied*; *Chuck Callahan Ford, Inc. v. Watson*, 443 N.E.2d 79, 80 (Ind. Ct. App. 1982).

The trial court also struck Langbehn's affidavit. We note that an expert's affidavit containing an opinion must establish that the witness has skill, knowledge, or experience in the field and must set out the admissible facts along with the reasoning and methodologies on which that opinion is based. *See F.A.C.E. Trading Co. v. Carter*, 821

N.E.2d 38, 44 (Ind. Ct. App. 2005), *trans. denied*. After reviewing Langbehn's affidavit, we conclude that the trial court did not abuse its discretion in striking the affidavit on the basis that the affidavit does not show that Langbehn qualified as an expert who could give an opinion on the issue of probable cause to warrant the filing of a lawsuit.

IV.

The trial court credited Gair's, Van Bokkelen's and Jensen's affidavits in making its determination that summary judgment was appropriate. Langbehn and Scheub contend that the trial court abused its discretion in doing so. With reference to Jensen, an attorney who practices in the legal responsibility area and who was hired as an expert, Langbehn and Scheub argue that the affidavit should have been struck because (1) Jensen expresses an opinion rather than facts gleaned from personal knowledge; (2) Jensen reviewed only documents provided by Gair and Van Bokkelen; (3) Jensen perused documents generated after the original lawsuit was filed, and (4) Jensen did not interview or depose either IDEM employees or District Directors to ascertain Langbehn's and Scheub's influence upon their decision-making. With reference to Gair and Van Bokkelen, the attorneys who represented Bogese, Hickory Hills, Interstate, and Carter in the original suit and are the defendants in the instant action, Langbehn and Scheub argue that the affidavits should have been struck because the attorneys are not disinterested affiants.

As we noted in *McCullough v. Allen*, 449 N.E.2d 1168, 1170 (Ind. Ct. App. 1983), "[i]t is true that, at one time, experts were not allowed to express an opinion as to an 'ultimate fact in issue.' This rigid rule, however, has been abrogated in Indiana." Thus, a

qualified attorney's legal opinion is admissible as to an ultimate fact in issue unless it addresses matters within the common knowledge and experience of ordinary persons. *Id.* An expert is not required to have personal knowledge and may base an opinion on hearsay. *Jenkins v. State*, 627 N.E.2d 789, 794 (Ind. 1993), *cert. denied*, 513 U.S. 812, 115 S.Ct. 64, 130 L.Ed.2d 21 (1994). Jensen's affidavit does not state matters of common knowledge but matters pertaining to the existence of probable cause. Whether reasonable attorneys would consider a claim worthy of litigation is a question that can only be answered by an expert familiar with the law and with the standards employed by reasonable attorneys. *Id*. We have affirmed the grant of affidavits that express an attorney's opinion concerning probable cause in a manner similar to, but less detailed than, Jensen's affidavit. *See McCullough*, 449 N.E.2d at 1170.

It is to be expected that Jensen would review the material submitted to him by the parties who first assessed the presence of probable cause. Therefore, it is no hindrance to admissibility that Gair and Van Bokkelen provided documents pertinent to their initial determination of probable cause. Furthermore, it is no hindrance that Jensen reviewed documents created after the filing of the antecedent action. Such documents are valuable to assist Jensen in understanding the context of other documents created before such filing. Finally, we note that Jensen, like Gair and Van Bokkelen, determined from his review of public documents that Langbehn's and Scheub's actions had considerable influence upon public sentiment and upon the District Board's actions. We further note that IDEM's denial of a permit was based upon the Board's communications as influenced by Langbehn's and Scheub's actions.

Furthermore, the trial court did not err in considering Gair's and Van Bokkelen's affidavits. These affidavits were pertinent to aver the uncontroverted facts pertaining to Gair's and Van Bokkelen's determination that there was probable cause to file suit against Langbehn and Scheub.

V.

Langbehn and Scheub contend, in a single sentence, that the trial court failed to comply with Ind. Trial Rule 56(C) because it did not designate the issues or claims upon which it found no genuine issue as to any material facts. We note that T.R. 56(C), which requires that the trial court state the issues and claims upon which summary judgment is granted, applies only where summary judgment is granted on less than all of the issues. *Richardson v. Citizens Gas & Coke Utility*, 422 N.E.2d 704, 713 (Ind. Ct. App. 1981); *Meier v. Pearlman*, 401 N.E.2d 31, 35 (Ind. Ct. App. 1980), *cert. denied,* 449 U.S. 1128, 101 S.Ct. 948, 67 L.Ed.2d 115 (1981). The rule does not require specific findings and conclusions when the trial court grants summary judgment on all issues. *DeBaets v. National Education Association-South Bend*, 657 N.E.2d 1236, 1238 (Ind. Ct. App. 1995), *trans. denied*. Here, the trial court granted summary judgment on all issues, and its summary judgment order met the requirements of T.R. 56.

In summary, we hold that the trial court did not err in granting the Defendants-Appellees' summary judgment motion or in denying Langbehn and Scheub's motion to correct error. Affirmed.

NAJAM, J., and DARDEN, J., concur.